

FILED BY CLERK

JUL 29 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0120-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WAYNE NORMAN CALLISON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR51369

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Thomas C. Horne, Arizona Attorney General
By Paul E. Carter

Tucson
Attorneys for Respondent
Arizona Department of Corrections

Wayne Norman Callison

Buckeye
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Wayne Callison seeks review of the trial court's order summarily denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz.

R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Callison was convicted after a jury trial of second-degree murder and sentenced to a partially aggravated, twenty-year prison term. We affirmed his conviction and sentence on appeal and, in a consolidated memorandum decision, denied relief on his petition for review of the trial court’s denial of his petition for post-conviction relief. *State v. Callison*, No. 2 CA-CR 1997-0037, No. 2 CA-CR 2001-0289-PR (memorandum decision filed Nov. 25, 2003).

¶3 In 2010, Callison filed a notice of post-conviction relief, asserting pursuant to Rule 32.1(d), Ariz. R. Crim. P. that he was being held beyond the expiration of his lawful sentence. He attached to that notice a petition for post-conviction relief contending his sentence did not include a consecutive term of community supervision, but the Arizona Department of Corrections (ADOC) had improperly “recently added community supervision to [his] sentence.” He also argued that, if a lawful sentence had not been imposed, his trial counsel had been ineffective in failing to advise him of that fact or to correct the trial court.¹

¶4 The trial court determined that, although the sentencing minute entry did not include community supervision, the sentencing transcript showed the sentencing

¹Callison also contemporaneously filed a “Request for a Sentence Clarification Order,” again asserting that the ADOC illegally had added a consecutive term of community supervision to his sentence, and requesting that the trial court clarify that his sentence did not include community supervision. The court did not address this request in its ruling and Callison does not discuss it in his petition for review.

court had imposed a consecutive term of community supervision as required by A.R.S. § 13-604(I). Accordingly, the trial court summarily denied Callison's petition.

¶5 On review, Callison again argues ADOC impermissibly added community supervision to his sentence and contends the trial court erred in finding the sentencing transcript showed that supervision had been imposed at the time of sentencing. He also asserts, as we understand his argument, that his trial counsel was ineffective for failing to advise him that he was required to serve a term of community supervision.

¶6 Successive and untimely petitions for post-conviction relief, like Callison's, may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). Ariz. R. Crim. P. 32.4(a), 32.2(b). None of those subsections apply to Callison's claims. For example, subsection (f) permits an untimely notice of post-conviction relief when "[t]he defendant's failure to file a notice of post-conviction relief of-right or notice of appeal within the prescribed time was without fault on the defendant's part." But that subsection, by its plain language, does not apply to notices of post-conviction relief filed by non-pleading defendants such as Callison. And Callison's claims do not fall within Rule 32.1(d) because the twenty-year prison sentence imposed has not expired. Therefore, even if Callison is correct and he is not subject to a term of community supervision, that term has not begun, and he still is in lawful custody. *See State v. Davis*, 148 Ariz. 62, 64, 712 P.2d 975, 977 (App. 1985) (claim under Rule 32.1(d) not cognizable unless petitioner would be "entitled to be released from imprisonment"). Thus, although the trial court need not have reached the merits of Callison's claims, we conclude it did not err in summarily denying his petition for post-conviction relief. *See*

State v. Olquin, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007) (“[W]e are obligated to affirm the lower court’s ruling even if it reached the correct result for the wrong reason.”).

¶7 We grant review but, for the reasons stated, deny relief.

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Presiding Judge

/s/ *J. William Brammer, Jr.*

J. WILLIAM BRAMMER, JR., Judge